

25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American statute.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American statute for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225-22 or 52.225-24, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225-21 or 52.225-23, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(c) Determination based on unreasonable cost of domestic construction material.

(1) *Manufactured construction material.* The contracting officer must compare the offered price of the contract using foreign manufactured construction material (*i.e.*, any construction material not manufactured in the United States, or construction material consisting predominantly of iron or steel and the iron or steel is not produced in the United States) to the estimated price if all domestic manufactured construction material were used. If use of domestic manufactured construction material would increase the overall offered price of the contract by more than 25 percent, then the contracting officer shall determine that the cost of the domestic manufactured construction material is unreasonable.

(2) *Unmanufactured construction material.* The contracting officer must compare the cost of each foreign unmanufactured construction material to the cost of domestic unmanufactured construction material. If the cost of the domestic unmanufactured construction material exceeds the cost of the foreign unmanufactured construction material by more than 6 percent, then the contracting officer shall determine that the cost of the domestic unmanufactured

tured construction material is unreasonable.

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25.605 Evaluating offers of foreign construction material.

(a) If the contracting officer has determined that an exception applies because the cost of certain domestic construction material is unreasonable, in accordance with section 25.604, then the contracting officer shall apply evaluation factors to the offer incorporating the use of such foreign construction material as follows:

(1) Use an evaluation factor of 25 percent, applied to the total offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable domestic construction material requested by the offeror.

(2) In addition, use an evaluation factor of 6 percent applied to the cost of foreign unmanufactured construction material incorporated in the offer based on an exception for unreasonable cost of comparable domestic unmanufactured construction material requested by the offeror.

(3) Total evaluated price = offered price + (.25 × offered price, if (a)(1) applies) + (.06 × cost of foreign unmanufactured construction material, if (a)(2) applies).

(b) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in paragraph (a) of this section and use the evaluated price in determining the offer that represents the best value to the Government.

(c) Unless paragraph (b) applies, if two or more offers are equal in price, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a